

MEMO TO: City Council

FROM: Kathleen Dooley, City Attorney

RE: March 31, 2006 Draft Conservation Easement

DATE: March 31, 2006

The March 31, 2006 easement draft reflects changes requested by City Council at their March 28 regular meeting. The changes are as follows, with explanations where required:

1. Page 7, line 10: add prevention of residential development as one of the easement goals.
2. Page 10, line 11: emphasize that the City may choose to include acreage disturbed for a road or utility project in its sole discretion.
3. Page 15, line 14: eliminate old reference to a county “co-holder.” County approval obtains regardless of whether the county is a co-holder of the easement.
4. Page 17, boundary line adjustments. This has been the topic of ongoing negotiations between the City and the Virginia Outdoors Foundation. The risk of encountering a boundary line dispute is inherent in the ownership of this property. The survey that The Nature Conservancy will provide for the City will assist it in dealing with future disputes, but it will not eliminate disputes with adjoining landowners. The City’s goal is to retain the authority to enter into reasonable agreements with adjoining landowners where there is a real dispute as to the location of the proper boundary between the properties.

The attorney for the Virginia Outdoors Foundation has agreed to recommend to the Board that it approve a boundary line adjustment for the City’s property under the criteria suggested – that a dispute actually exist, and that the settlement involve only as much land as is needed to settle the dispute.

In the event that the City, for some reason (for example lack of time) is unable to secure the approval of the Virginia Outdoors Foundation, then it may use the developed alternatives for its convenience. However, Virginia Outdoors Foundation approval should be available for most boundary line settlement disputes.

Finally, reference to a final judicial decree is added. If the City cannot settle the boundary dispute and the matter is litigated, then the court's decree essentially declares that the land lost was not in the City's ownership at the time the easement was conveyed. Such a finding would be binding on all of the easement holders as well as the City.

5. Page 19: The Nature Conservancy will complete a preliminary baseline report before closing on the easement. It will then supplement the report with aerial photographs documenting the current condition of the property.
6. Page 20: Paragraph 3 now contains more details about the monitoring plan, and requires The Nature Conservancy to provide a copy of each annual final report to the City.
7. Page 20: Paragraph 4 now states that the Virginia Outdoors Foundation will ask the Attorney General to consult with the City's legal counsel in the event that the City undertakes civil litigation to further the Conservation Values. The Virginia Outdoors Foundation does not have the legal authority to require future Attorneys General to consult with the City, but it may agree to ask, and since the state agencies are co-holders of the easement, it is most likely that the Attorney General will agree to consult.
8. Page 21, line 13 simply permits the City and Virginia Outdoors Foundation to pursue whatever rights are available to them at law. Per Mr. Lain, it is highly unlikely that the City would ever be liable for monetary damages. The more likely scenario, in the event the City violates the easement, is that it would be required by a court to restore the disturbed area.
9. Page 22, line 14 requires easement holders to notify the City prior to taking an action against a third party trespasser.